

Regulatory Requirements for TAS Eligibility Under the Safe Drinking Water Act Public Water System Supervision Program and Examples of Supporting Documentation

The information below identifies the regulatory requirements that the U.S. Environmental Protection Agency considers in assessing a federally recognized Indian tribe's (tribe or tribal) application for treatment in the same manner as a state (TAS) as part of its review of a tribal application for primary enforcement responsibility to implement the national standards for the Safe Drinking Water Act public water system supervision (PWSS) program under 40 CFR part 142, subpart B. This document addresses the TAS requirements set forth in 40 CFR 142.72 and 142.76 and provides examples of documentation that can meet those requirements.¹

Regulatory Provision	Examples of Documentation
1) The Indian tribe must be federally recognized by the Secretary of the Interior. 40 CFR 142.72(a). To meet this requirement, the tribe's application must include a statement that the tribe is recognized by the Secretary of the Interior. 40 CFR 142.76(a)	The Secretary of the Interior publishes in the <i>Federal Register</i> (FR) a list of federally recognized Indian tribes. Applicants often submit a recent copy of the FR list to establish that the tribe has federal recognition.
2) The Indian tribe has a tribal governing body carrying out substantial governmental duties and powers. 40 CFR 142.72(b). An application must include a concise, descriptive statement demonstrating that the tribal governing body is currently carrying out substantial governmental duties and powers over a defined area. 40 CFR 142.76(b). That statement should:	
<ul style="list-style-type: none"> • Describe the form of the tribal government. 40 CFR 142.76(b) (1). 	An application may discuss the organizational structure of the tribe and identify and describe the entities that exercise the executive, legislative, and judicial functions of government.
<ul style="list-style-type: none"> • Describe the types of governmental functions currently performed by the tribal governing body such as, but not limited to, the exercise of police powers affecting (or relating to) the health, safety, and welfare of the affected population; taxation; and the exercise of the power of eminent domain. 40 CFR 142.76(b) (2). 	An application may discuss specific regulatory, legislative, executive, and judicial activities the tribe undertakes, including actions to exercise its police power to protect the environment, e.g. establishing regulatory programs or carrying out permitting and enforcement activities.
<ul style="list-style-type: none"> • Identify the sources of the tribal government's authority to carry out the governmental functions currently being performed. 40 CFR 142.76(b) (3). 	Applications identify sources of the tribal government's authority, which may include oral or written tradition, an oral or written tribal constitution, tribal ordinances, codes, by-laws, charters, resolutions, relevant provisions of federal treaties, executive orders, or statutes, etc.

¹ Where the applicant has previously been granted TAS eligibility for a Safe Drinking Water Act, Clean Water Act, or Clean Air Act program, the applicant need only provide the required information unique to the Public Water System Supervision program. *See* 40 CFR 142.76(f).

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Regulatory Provision	Examples of Documentation
<p>3) The Indian tribe demonstrates that the functions to be performed in regulating the public water systems that the applicant intends to regulate are within the area of the Indian tribal government's jurisdiction. 40 CFR 142.72(c).² The application must include:</p>	
<ul style="list-style-type: none"> • A map or legal description of the area over which the Indian tribe asserts jurisdiction. 40 CFR 142.76(c). 	<p>Applications include maps showing the area and public water systems over which the tribe asserts authority. Some tribes provide maps based on an official survey by the U.S. Department of the Interior or an official map of the reservation prepared by the Bureau of Indian Affairs. A written legal description discusses with some specificity the locations of the boundaries of the reservation areas over which the tribe asserts authority.</p>
<ul style="list-style-type: none"> • A statement by the Tribal Attorney General (or equivalent official) that describes the basis for the tribe's jurisdictional assertions (including the nature or subject matter of the asserted jurisdiction) and a copy of those documents such as tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions that the tribe believes are relevant to its assertions regarding jurisdiction. 40 CFR 142.76(c). 	<p>Legal counsel statements identify and discuss the legal basis for the tribe's assertions of authority over areas/water systems covered by the application, with special attention to showing the tribe has jurisdiction over nonmember activities, if applicable. Statements may provide land ownership information, including maps and summary information on tribal trust, Indian trust, Indian fee, nonmember fee, and other types of land status or ownership. Statements summarize information within relevant provisions of listed documents and explain how the documents support the tribe's assertion of authority.</p>
<ul style="list-style-type: none"> • A description of the locations of the public water systems the tribe proposes to regulate. 40 CFR 142.76(c). 	<p>Applications identify the public water systems for which the tribe intends to regulate, describe their locations, and may include a map that shows the locations and configurations of those public water systems.</p>

² This overlaps with the requirement that a state or tribe seeking primacy must demonstrate that its laws and ordinances to carry out the PWSS program were duly adopted and are enforceable, 40 CFR 142.11(a) (7) (i), and that it has adequate authority to carry out primary enforcement responsibility. 40 CFR 142.11(a) (7) (ii).

Regulatory Provision	Examples of Documentation
<p>4) The Indian tribe is reasonably expected to be capable of administering (in a manner consistent with the terms and purposes of the Safe Drinking Water Act and all applicable regulations) an effective Public Water System Supervision program. 40 CFR 142.72(d). The application must include a narrative statement describing the capability of the Indian tribe to administer an effective Public Water System Supervision program. 40 CFR 142.76(d). That statement should include:</p>	
<ul style="list-style-type: none"> • A description of the Indian tribe's previous management experience, which may include the administration of programs and services authorized by the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), the Indian Mineral Development Act (25 U.S.C. 2101, et seq.), or the Indian Sanitation Facility Construction Activity Act (42 U.S.C. 2004a). 40 CFR 142.76(d) (1). 	<p>In addition to experience with the federal programs listed in the regulation, tribal applications may also discuss the tribe's previous management experience with its own tribal programs. This discussion need not address environmental program management experience, which is included in the next heading.</p>
<ul style="list-style-type: none"> • A list of existing environmental or public health programs administered by the tribal governing body and a copy of related tribal laws, regulations, and policies. 40 CFR 142.76(d) (2). 	<p>Applications describe a tribal air, water, or waste management program, or any other environmental or public health programs administered by the tribe, as well as tribal experience with resource management, including forestry and fisheries. Relevant documents include copies or summaries of tribal laws and regulations governing the described program(s). A tribe is not required to have experience in administering environmental programs, but a tribe with such experience may wish to provide such information.</p>
<ul style="list-style-type: none"> • A description of the Indian tribe's accounting and procurement systems. 40 CFR 142.76(d) (3). 	<p>Applications may describe the system of record-keeping and accounting the applicant uses for managing tribal funds and how it procures goods or services. A tribe that has received EPA financial assistance will have managed procurement under its grant using a system consistent with the procurement requirements set forth at 40 CFR 31.36.</p>
<ul style="list-style-type: none"> • A description of the entity (or entities) that exercise the executive, legislative, and judicial functions of the tribal government. 40 CFR 142.76(d) (4). 	<p>Applications describe the tribal governmental system. This information may overlap with or duplicate information about the tribal governmental structure and functions discussed under 40 CFR 142.76(b) (1) above, and a tribe may refer to, rather than repeat, that information.</p>
<ul style="list-style-type: none"> • A description of the existing, or proposed, agency of the Indian tribe that will assume primary enforcement responsibility, including a description of the relationship between owners/operators of the public water systems and the agency. 40 CFR 142.76(d) (5). 	<p>Applications describe the tribe's environmental management program.</p>

Attachment H

Regulatory Provision	Examples of Documentation
<ul style="list-style-type: none">• A description of the technical and administrative capabilities of the staff to administer and manage an effective Public Water System Supervision program or a plan that proposes how the tribe will acquire additional administrative and/or technical expertise. The plan must address how the tribe will obtain the funds to acquire the additional administrative and technical expertise. 40 CFR 142.76(d) (6).	Applications describe the qualifications of tribal staff, including resumes. Position descriptions are also useful documentation, since individual staff may change in future years. Or an application may include a plan that describes how the tribe will acquire the needed expertise to operate an effective program and how it will obtain the funds required to develop technical and administrative expertise. Evidence of management of EPA grants may also be included.
5) Additional information required by EPA that, in EPA's judgment, is necessary to support a tribe's eligibility. 40 CFR 142.76(e).	Additional documentation as requested from a tribe by EPA may be needed to clarify or supplement the application.